

## SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into effective as of the \_\_\_\_ day of October, 2002, (the "Effective Date") by and between THE CITY OF COLLEGE STATION, TEXAS, a municipal corporation and home-rule city of the State of Texas situated in Brazos County, acting by and through its City Council (the "City"), and TAC REALTY, INC., a Texas corporation (together with its successors and assigns, the "Developer"), and relating to that certain Development Agreement (the "Original Agreement") executed by and between the City and the Developer effective as of the 1<sup>st</sup> day of November, 2001.

FOR AND IN CONSIDERATION of \$10.00 and other good and valuable consideration, including, without limitation, the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged by the parties, City and Developer hereby agree, each with the other, as follows:

1. Capitalized Terms. Any capitalized term that is used in this Agreement and is not defined herein shall have the same meaning ascribed to it in the Original Agreement.

2. Amendment.

- A. The last sentence of Section 8.3 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

In the event that the appropriate portion of the Design Budget exceeds either the Hotel Cap or the Conference Center Cap and the parties continue hereunder without termination of this Agreement, the parties acknowledge and agree that such fact shall not affect either party's ability to terminate this Agreement pursuant to Section 8.4 of this Agreement based on the Construction Budget exceeding, in the case of the Developer, \$38,000,000.00 for the Hotel Project, and in the case of the City, \$18,000,000.00 for the Conference Center Project.

- B. Appendix A of the Original Agreement is hereby amended to include the following definition of "Construction Budget":

"Construction Budget" means the budget for the construction of the Project prepared in accordance with Section 8.4, which may include all costs associated with the development of the Project, including but not limited to, design and consultant costs; soft costs (i.e., interest, insurance); pre-opening costs; construction costs; furniture, fixture and equipment costs; Shared Facilities costs; and Site Improvement costs.

3. Ratification. The terms of the Original Agreement are modified and amended pursuant to the terms of this Agreement and are hereby conformed to be consistent with the terms and provisions of this Agreement. Except as provided in this Agreement, the terms of the Original Agreement (including, without limitation, all Exhibits attached thereto) are hereby confirmed and ratified for all purposes and shall remain in full force and effect as originally provided.



4. Multiple Counterparts. Multiple copies of this Agreement may be executed by the Parties. Each such executed copy shall have the full force and effect of an original executed instrument.

EXECUTED to be effective for all purposes as of the Effective Date first written above.

THE CITY:

THE CITY OF COLLEGE STATION, TEXAS

By: \_\_\_\_\_  
Ron Silvia, Mayor

ATTEST:

By: \_\_\_\_\_  
Connie Hooks, City Secretary

APPROVED:

By: \_\_\_\_\_  
Thomas E. Brymer, City Manager

By: \_\_\_\_\_  
Charles Cryan, Director of Finance

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James P. Plummer

DEVELOPER:

TAC REALTY, INC., a Texas corporation

By: William C. Atkinson  
William C. Atkinson, President